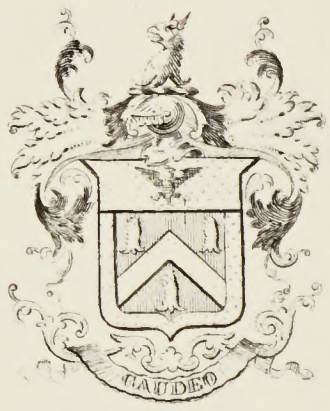

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THE

MEMORIAL

OF

PETER LIVIUS, Esq.

One of his Majesty's Council for the Province of New Hampshire, in New England,

TO THE

LORDS COMMISSIONERS

For Trade and Plantations;

WITH

THE GOVERNOR's ANSWER,

AND

THE MEMORIALIST's REPLY,

Printed Article by Article,

ALSO

Their Lordships Report thereon,

TO

HIS MAJESTY,

AND

The Opinion of the Attorney, and Sollicitor General, in 1752, referred to by the Governor.

1773.

RPJCB

THE

MEMORIAL

OF

PETER LIVIUS, Esq.

Of his Majesty's Council for the Province of New Hampshire,

TO

The Right Hon. the Lords Commissioners for Trade and Plantations,

Most humbly sheweth,

I. THAT John Wentworth, Esq. now governor of the said province, with the advice and consent of his council, but without the intervention of a jury or any previous legal process, has deprived the grantees under the crown of many large tracts of land, and granted them to other persons, upon suggestion only that the first grantees had not performed the conditions of their grant, as may be seen by the journals of the said council.

I. Article of the Memorial.

The Answer of John Wentworth, Esq. governor of his Majesty's province of New Hampshire, as directed by the letter of the Lords of Trade and Plantations, dated the 29th day of July, 1772, to the Complaint exhibited against him by Peter Livius, Esq. a member of his majesty's council for the said province.

THE Respondent begs leave to observe, that the practice of regranting lands forfeited by the first

Answer to the I. Article of the Memorial.

grantees not performing the conditions of their grant, has been of long uſage, and the mode of doing it always invariable the ſame in this province: the meaſure is ſupported by the opinion of Sir Dudley Rider, and Mr. Murray, now Lord Mansfield, given by them in the year 1752, then attorney and ſollicitor general, to the following effect.

" We are clearly of opinion the crown may " reſume lands, granted on conditions of ſettling " within a ſtated time, where there has in fact " been no ſettlement.

" The proper means of making ſuch reſump- " tion, after ſuch default, is by making new " grants to ſuch as ſhall be willing to accept " them, at ſuch rents and on ſuch terms as ſhall " be thought adviſable."

This opinion, as the reſpondent apprehends, was tranſmitted by the Lords of Trade and Plantations to his predeceſſor, for his government to regrant lands that became forfeited in this manner, and was always conſidered a ſufficient authority to eſtabliſh the legality of the meaſure, and of the manner in which it has been uſually practiſed here.

By the proofs it will appear very manifeſt, that proper care was always taken to do ſtrict juſtice to the firſt grantees, and that no land was regranted without full evidence that no ſettlement was made upon it, purſuant to the conditions of the grant. Indeed the moſt particular attention and regard was always paid to the firſt grantees; and no one inſtance can be pointed out wherein any of them was affected one ſhilling in his property, or had his land re-granted, where the ſame

was

was not clearly forfeited; nor was any perſon ever known to complain of any ſuch thing in the province.

There is the utmoſt neceſſity for re-granting lands in this manner to promote the cultivation of the province. For, unleſs the terms of ſettlement were enforced thereby, all improvements would be neglected; public roads would not be opened; no quit rents would be paid. Monied men would engroſs all the land, and the poorer ranks of the people would be neceſſiated to buy of the monopolizers at too dear a rate: obſtructions and impediments that would occaſion ſuch a ſlow progreſs in the improvements of the country, as would keep it in an uncultivated deſtitute ſtate for a very long time: whereas at preſent, it ſettles ſo rapidly as to have the people in the province increaſed at leaſt one third in number within five years paſt.

But every good purpoſe effected by re-granting forfeited lands would be intirely defeated by the proceſs propoſed by Mr. Livius. For theſe lands being granted in tracts in ſeveralty to ſixty or ſeventy perſons, the verdict of a jury would be requiſite to vacate each perſon's ſhare, which would be impracticable to obtain, as in many inſtances the grantees never took poſſeſſion; and no reſident is to be found on the land, nor perhaps within twenty miles of it. Moreover, theſe forfeitures were never underſtood to be of ſuch a nature as to require, or even admit the intervention of a jury, as is neceſſary in caſes where eſtates become forfeited to the king by attainder or other cauſes.

And it was intended, by expreſsly reſerving to his Majeſty in the grant an immediate right of re-granting the land where no ſettlement was made, to obviate the difficulty naturally ariſing from any tedious or impracticable proceedings at law. Mr. Livius himſelf voted for re-granting forfeited lands, as was cuſtomary in the province, and he never was known to object to it until he took it in his head to act upon principles of oppoſition.

THE MEMORIALIST's REPLY.

Reply to the Anſwer to the I. Article

IN anſwer to the Governor's defence on the firſt article againſt him, your Memorialiſt begs leave to obſerve, that the Governor does not deny the truth of the charge, but endeavours to palliate it by ſaying, firſt, That it is *uſual*, *convenient*, and *neceſſary*, to reſume the crown lands, and re-grant them in the manner charged. And, ſecondly, That this *uſage*, *conveniency*, and *neceſſity*, are founded on, and ſupported by an opinion which he, the Governor, apprehends to have been expreſsly given to his predeceſſor, for this occaſion, by the preſent Lord Mansfield and the late Sir Dudley Rider. To theſe two defences your Memorialiſt offers the following anſwers.—As to *uſage*, it is very true the preſent Governor has rendered it a very uſual proceeding to take away people's land, in a ſummary arbitrary manner, by vote of council, without any regard to law; but this practice cannot be, as the Governor aſſerts, of long uſage; for the moſt ancient grant of the crown lands in the province ſcarce exceeds fifteen or twenty years. This proceeding has grown

grown into practice under the preſent Governor, and he cannot ſhelter himſelf by precedents of his own making. Your Memorialiſt readily admits the *conveniency* of ſuch a practice to the Governor and his relations, but to them only; for to the ſettlement of the new lands, and to the people in general, it has been of pernicious conſequence, and will be much more unleſs it be diſcountenanced; as all confidence in the ſecurity for property, the grand ſource of exertion and induſtry, muſt die away, when a man's eſtate lies at the arbitrary diſpoſal of a Governor and Council, eſpecially if compoſed of relations and connections. And your Lordſhips will readily conceive, that the diſcouragements and diſtreſſes muſt be much greater than the conveniency the Governor pretends from his extraordinary proceedings. And, as there is neither *uſage* nor *conveniency* to plead, ſo neither is there any kind of *neceſſity* for this new mode of proceeding. The method appointed by law to reveſt the crown with lands, when the conditions on which it was granted are not performed, is very eaſy in practice, and well known to every lawyer, namely by an inqueſt of office by a jury, who find the premiſes forfeited, without which all clauſes of re-entry, ceſſer, &c. in a crown grant, as well as all ſubſequent grants, are declared to be of no effect by 18 Hen. VI. chap. 6. 21 James I. ch. 25.

But your Memorialiſt is not ſurpriſed that the governor and the council ſhould reject all ſuch proceſs, as "troubleſome, inconvenient, and tedi-" ous;" for men who are diſpoſing of all things as they

they pleaſe, muſt neceſſarily find laws a great impediment in their way.

In anſwer to the ſecond part of the Governor's defence againſt the firſt article, your Memorialiſt begs leave to remark the manner in which a few words of an opinion given on a very different occaſion by the preſent lord Mansfield, and the late Sir Dudley Rider, are taken out of the opinion, and are altered and wreſted to the governor's preſent purpoſe. This opinion was given on the following occaſion, the people of the Maſſachuſets Bay had improved a quantity of land, which on running the line between them and the colony of Connecticut, proved to be the property of the laſt mentioned colony: the Maſſachuſſets Bay thereupon granted, by way of equivalent to the colony of Connecticut, a quantity of land, as it was ſuppoſed within the ſaid province, but upon a ſubſequent running the line between them and New Hampſhire, theſe equivalent lands, or a great part of them, together with ſome lands granted by the Maſſachuſets to their own people, proved to be in New Hampſhire, and to be the property of the crown, and not of the Maſſachuſets, who are by charter proprietors of the ſoil within their own province, but in theſe inſtances had granted lands that were without their province; and it was on this occaſion that the two great lawyers mentioned gave directions in what manner the crown ſhould reſume lands, which had been, as it were uſurped and diſpoſed of by a body corporate; and is very different from the caſe of the Governor depriving the grantees under the crown of their lands, and granting them to others, on

ſuggeſtion

ſuggeſtion only that the firſt grantees had not performed the condition of their grant. This would have appeared, had the governor produced, as he ought to have done, the whole opinion inſtead of a partial quotation of a few words, and thoſe not even the words of the opinion, but only what he is pleaſed to call the "*Effect.*" As the Governor, apparently conſcious that it would not make in his favour, has not thought proper to produce the whole, your Memorialiſt prays your Lordſhips would call for this opinion, which is in your office, and ſee the manner in which the Governor endeavours to impoſe on your Lordſhips.

Your Memorialiſt cannot admit that proper care was taken of the firſt grantees on theſe occaſions of taking away their lands, unleſs where they were willing to pay as large fees as any other perſons; he alſo denies that this proceeding of the Governor has been generally equitable; in ſome caſes doubtleſs he has reſumed and regranted lands, which poſſibly might have been reſumable by due courſe of law, but as the Governor calls upon your Memorialiſt to produce one inſtance of either ſettlement or complaint in theſe caſes, your Memorialiſt will ſhew your Lordſhips, by the beſt evidence he is able on ſo unexpected a diſtinction, a few inſtances which will ſerve to ſatisfy your Lordſhips, "that ſtrict juſtice and equity, and "the moſt particular attention and regard to the "firſt grantees," were not always the rule of conduct in theſe proceedings.

Your Memorialiſt alſo utterly denies having been at any time an accomplice in, or any way conſenting to ſuch illegal and unjuſt practices as the

the Governor aſſerts, but has ever oppoſed them as far as he was able.

The II. Article of the Memorial.

Memorial Article II. That by an act of the General Aſſembly a certain duty was granted on foreign ſhipping, for providing the fort in New Hampſhire with powder, which duty is there commonly called powder-money; that ſince the year 1741 no account has been rendered of it, although large ſums have been received, and are generally ſuppoſed to have been appropriated to the uſe of private perſons. That in the year 1768 the Aſſembly paſſed a vote for an enquiry into the ſtate of this money, to which vote the Council would not agree, and entered the reaſons for their non-concurrence on the journals. Your Memorialiſt, thinking the ſaid non-concurrence very improper, deſired that he might alſo enter the reaſon of his diſſent, which the Governor and Council refuſed, as may be ſeen by the journals of the General Aſſembly, now in the office here, of the 7th and 9th of June, and 26th of Auguſt, 1768.

The Answer to II. Article of Memorial.

Anſwer to II. Article of Memorial. The Reſpondent tranſmitted to your Lordſhips, in March, 1768, an account of the receipt of this duty; and he has taken care to have it duly collected and regular accounts kept of it, agreeable to his inſtructions ſince his acceſſion to the government.

He does not apprehend that any part of it was ever applied to the uſe of private perſons, as ſuggeſted

geſted by Mr. Livius. The ſum of 258l. 0s. 11¼d. lawful money collected before his time remained unappropriated by the late Governor, which he did not know until laſt year, and he immediately inſtituted a proſecution for it in the name and on behalf of his majeſty, and obtained judgment for recovery of that ſum about ſix months ago: this ſeems to be the whole of that duty that was not paid or payable, for ſometimes the powder remained outſtanding for want of a proper magazine to put it in, in powder, or otherwiſe applied to the uſe of the caſtle. Mr. Livius well knows that this proſecution was commenced, and endeavoured to oppoſe it, by delivering his ſentiments againſt the recovery of the money. But by taking this ſtep the Reſpondent has put it out of his own power, or the power of any future Governor to miſapply any part of this duty, as any deficiency that may appear in the appropriation of it can be recovered at law.

With regard to the vote of the Houſe of Aſſembly for an inquiry into the ſtate of this duty, and the proceedings in the Council upon it, to ſome part of it which Mr. Livius diſſented, it was a tranſaction intirely between the Council and Houſe of Repreſentatives, in which the Reſpondent had no kind of interference, notwithſtanding Mr. Livius aſſerts, that the Governor joined with the Council in refuſing to enter his reaſons of diſſent. The motive of the Houſe of Repreſentatives for an inquiry into the ſtate of this duty, aroſe from a view of bringing the application of it under their own controul, in which Mr. Livius ſided with them. This is evident by their paſſing a vote ſince

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that time, to grant 300 l. lawful money, for building a powder-houſe, and for other repairs at the caſtle, to iſſue out of this duty, to which vote the Council did not agree, becauſe the duty was granted for the particular purpoſe of providing the fort with powder, and the appropriation of it was underſtood to belong entirely to his Majeſty; upon this nonconcurrence of the Council, the Houſe voted 100 l. for the ſame purpoſe out of another fund. This has been expended in rebuilding the powder-houſe, which has been completed within this current month, and is now only in a ſafe condition to receive powder.

As to the examination of the accounts, they were open to all the members of the Houſe as private men, but there never was any application made to the Reſpondent for them by the Houſe; and if that had been, he would have no other objection in indulging their deſire, but that it would be yielding up a point that is underſtood to belong only to the crown, which he could not in duty conſent to. The Reſpondent never harboured the moſt diſtant idea not to give the faireſt account of every ſhilling of this duty; and the accounts themſelves will ſhew that the whole is not an object of inducement to entertain a thought to the contrary.

The Reply to the Answer to II. Article of Memorial.

Reply to Anſwer to II. Article of Memorial.

The Governor, in his anſwer to this ſecond article, has endeavoured to perplex the complaint, your Memorialiſt had ſet forth, that he was precluded from entering his proteſt on the journals.

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The Governor has not denied any part of the charge, except his own interference in the matter: your Memorialiſt need only refer to the journals, whereby it appears, that the Governor was preſent in Council when your Memorialiſt deſired to enter his proteſt, and alſo when it was refuſed. And he avers that he did then particularly apply to the Governor that he might have liberty to enter his proteſt, for that the Council had no more right to preclude him therefrom, than they had to forbid his voting; but the Governor would not attend to this application. In anſwer to what the Governor ſays about this duty, Your Memorialiſt begs leave to reply, that many members of the General Aſſembly, and among them your Memorialiſt, from the knowledge they had of the affairs of the province, were of opinion that large ſums of this powder-money had been averted from the public ſervice; and your Memoraliſt is ſtill of that opinion, and is confirmed therein by what the Governor himſelf has now informed your Lordſhips of, namely, that there was then in the hands of the late Governor alone, the ſum of 258 l. 0 s. 11 $\frac{1}{4}$ d. of lawful money, when the Aſſembly ſent up a vote for an enquiry into the ſtate of this fund.

Your Memorialiſt thought himſelf bound in duty to aſſiſt in recovering this money for the crown, but the Governor (who, as he acknowledges in another part of his defence, did then expect about three-fourths of the late Governor's eſtate) together with his Council, threw in the way all poſſible impediments, and the Council finally diſſented from the vote of the Aſſembly, for the rea-

ſons which your Lordſhips will ſee on the journals, and which your Memorialiſt preſumes you will not find ſatisfactory. That at the time when the Council, againſt all order and precedent, were entering the reaſons of their own diſſent, they refuſed your Memorialiſt the liberty of entering the reaſons of his diſſent.

That the Governor's endeavour to avail himſelf of a pretence that this matter was ſolely cognizable by the Crown, is not well founded; for though the General Aſſembly could not alter the appropriation of this money, yet, as they are every year required to provide for the expences of the fort, it is neceſſary they ſhould be informed how far this particular appropriation goes, in order that they may know what proviſion to make for the remainder of the ſum requiſite. This duty was granted by the General Aſſembly, and every reaſon for laying before them all the other public receipts and expenditures does equally and very ſtrongly apply to the preſent caſe.

What the Governor has informed your Lordſhips of, concerning the building of a powder-houſe, although it may in other reſpects be proper information to your Lordſhips, yet, as it does not relate to the preſent buſineſs, but is intended to perplex it, by lengthening it out, your Memorialiſt avoids dwelling upon it; but he begs leave to deny, that he had an opportunity of delivering any ſentiments either for or againſt the recovery of the 258 l. mentioned by the Governor; for the matter never came into the court where your Memorialiſt ſat. So long as the late Governor lived, it is very evident, that all enquiry into the ſtate of this fund was defeated;

feated; and it was not till the preſent Governor found he was not to enjoy what the other left, that he inſtituted a proſecution for recovery of what remained unappropriated by the late Governor. Your Memorialiſt alſo denies that the Governor has put it out of the power of himſelf, or any future Governor, to miſapply this duty; for the greater part of the former miſapplications ſtill ſubſiſt, and, as your Memorialiſt believes, will ſubſiſt and increaſe, unleſs the receipts and expenditures of this money be permitted, as all others are, to be annually laid before the General Aſſembly.

The III. ARTICLE of MEMORIAL.

Memorial III. Article.

That in the twenty-ſix years of the adminiſtration of the late Governor Wentworth, uncle to the preſent, many townſhips of crown lands, each of the contents of ſix miles ſquare, were granted to perſons who engaged to ſettle them; and in each of the ſaid townſhips five hundred acres were granted to the late Governor, on the ſame conditions with the other grantees. The late Governor died in Autumn, 1770, without deſcendants, and deviſed the whole of his eſtate to his widow. That, in the beginning of March, 1771, the preſent Governor propoſed to his Council to adviſe and conſent to the granting to himſelf, but through other perſons, all the lands which had been granted as aforeſaid, to his predeceſſor, alledging that the former grants, being made immediately to the late Governor, were void, and the lands remained as if no grants had ever been made of them. Your Memorialiſt obſerved to him, that it would appear very ſtrange on the journals, that the Governor ſhould deſire theſe grants for himſelf: the Governor allowed that it would,

would, and added that therefore the entry need only be, that the Council did adviſe and conſent to the granting theſe lands to any of the King's ſubjects. Your Memorialiſt made this obſervation, in hope that the Governor would have felt the impropriety of doing what he allowed unfit to appear when done; but he did not ſeem to feel it; and in anſwer to ſome objections, concerning the invalidity of the former grants, he ordered to be read a long reaſoning and opinion of a lawyer at Boſton againſt the grants. Your Memorialiſt then obſerved, that although the Council had no legal power to give judgment in ſuch caſes, yet if they would aſſume the power, your Memorialiſt deſired, that as they had in effect heard counſel on the one ſide, they would alſo ſuffer counſel on the other. This was refuſed; and at a ſubſequent day it was voted as the Governor deſired. That all the Council, your Memorialiſt excepted, were nearly connected and related to the Governor. That it appeared to your Memorialiſt a very extraordinary caſe, that the title of the king's ſubject ſhould be thus prejudiced without judge or jury, without trial of any kind, without hearing, or even giving her notice, when, at the ſame time, counſel was admitted againſt her. That your Memorialiſt therefore thought it his duty to proteſt; but his proteſt was never ſuffered to be on the journals, nor even to be put on file, till near twelve months after. That the annexed is a copy of the ſaid proteſt.

Answer to III. Article of Memorial.

Anſwer to III. Article of Memorial.

The late Governor Wentworth, uncle to the preſent, as Mr. Livius remarks, made reſervation

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in his own name of five hundred acres of land in many townſhips, upon his making grants of them, which he intended for his own uſe. On his Majeſty's declaring Connecticut river to be the boundary line between this province and the province of New York, a great number of townſhips, in which ſome of theſe lots were ſituated, fell into that government. There were 1200 l. lawful money, expended in improving one lot in particular; but the perſons who laid out this money under title of the late Governor, were deprived of the land and all the improvements upon it, without a conſideration being made to them, and the land granted to other perſons, becauſe the mode of reſervation was not conſidered to give any legal title to the late Governor; and he was ſo conſcious of the inſufficiency of the title himſelf, that he never attempted to alienate any of thoſe tracts, except in one or two inſtances in this province. *And the perſons who made ſettlement in theſe caſes* were afterwards ſecured in their poſſeſſions by the Reſpondent; beſides, the late Governor ſollicited him for grants of all theſe reſervations, which he refuſed, unleſs a mandamus could be procured from his Majeſty for that purpoſe, at a time when he had ſo deviſed his eſtate, that three-fourths of it would have probably devolved upon the Reſpondent; and notwithſtanding the old gentleman was afterwards prevailed upon to alter his will, and deviſed the whole eſtate to his wife, as Mr. Livius obſerves, the Reſpondent's conduct has not been in any degree influenced thereby. The widow is only tenant for life by the will; ſo that the reverſion of this land, if the teſtator had any title in the premiſes, muſt come to the

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Reſpondent's family, which ſhews that he has acted diſintereſtedly in this matter.

The uncertainty that thus ſubſiſted about the validity of the mode of conveyance, was an entire obſtruction to the ſettlement of theſe lands, as no perſon would chuſe to lay out their ſubſtance in the cultivation of them, unleſs they were ſatisfied of holding by certain tenure. The lands, for theſe reaſons, lay waſte, and were all become forfeited for non-performance of the conditions of ſettlement, even admitting the original title to have any validity. And as it is againſt the intent of all grants, and even againſt reaſon, that the land ſhould remain uncultivated when it might be improved, the Reſpondent conſidered it his duty, when application was made to him for grants of ſome of theſe tracts, to remove the obſtacle that impeded the cultivation of them, and take the neceſſary ſteps to forward it, which would be inexcuſeable to neglect, particularly when the meaſure was ſupported by ſuch an authority as the opinion of the Attorney and Solicitor General, already quoted in the Anſwer to the firſt Article.

From theſe conſiderations, the Reſpondent aſked the advice of the Council, about granting theſe lands to ſuch of his Majeſty's ſubjects as would improve and ſettle the ſame, to which the Council did adviſe and conſent. All the proceedings of the Council on the meaſure are hereunto annexed. No queſtion was ever put to the Council, about granting theſe lands to the Reſpondent, in any reſpect whatever, as alledged by Mr. Livius; *nor were there any purchaſers under the late Governor who made improvments* on theſe lands, as urged by him

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in the reaſons of diſſent, the whole of which, and of his conduct on the occaſion, has a manifeſt tendency againſt the ſettlement of the land, and is directly contrary to the opinion of the attorney and ſolicitor general before referred to.

The Reſpondent has given grants of ſome of theſe lots, on conditions of ſettlement, to ſome of his Majeſty's ſubjects, purſuant to the advice of the Council, in their minute of March 1771, and many of them are ungranted as yet; but the Reſpondent has not directly or indirectly any intereſt or concern of any kind whatever in ſuch as have been granted. This would be proved by the oath of all the grantees, but he cannot conveniently procure that proof at preſent, on account of their remote reſidence from Portſmouth.—If any claimants under the late Governor thought themſelves aggrieved in this caſe, the law was open to them for redreſs, although it is an inconvenience, which it would give the Reſpondent much pain to find that any act of his, or of his Majeſty's Council in this province, would unneceſſarily expoſe any of the king's ſubjects to, under their juriſdiction. Mr. Livius's diſſent was admitted on file the very day he produced it at the Council, notwithſtanding he aſſerts the contrary. The reaſon why the Council did not allow it to be entered on the minutes was only becauſe it was not cuſtomary to do ſo in any former inſtances.

Mr. Livius ſays, that he urged ſome arguments with the Reſpondent ſome time before the Council adviſed to the granting theſe lands, to diſſuade him from it; but in fact a ſyllable never was exchanged between them on the ſubject, prior to

the 19th of March, 1771, when the vote paſſed for that purpoſe; on that day, as well as the Reſpondent recollects, Mr. Livius threw out ſome ſurmiſes and oblique hints that the Reſpondent intended granting the land for his own benefit, which had no foundation but in his own fancy, for he had no ſuch intention; and the Reſpondent being informed that Mr. Livius had frequently expreſſed his wiſhes in public company that the Governor might ſuſpend him, paſſed by what he ſaid with little attention, being perſuaded that he only aimed to create an altercation that may force the Reſpondent not to treat him with that lenity which it was his hearty diſpoſition to exerciſe in every part of his duty.

Reply to Answer to III. Article of Memorial.

Reply to Anſwer to Memorial ArticleIII.

In anſwer to the third article, the Governor does not deny, that without judge or jury, without trial of any kind, without hearing the widow, or even giving her notice, he did take away her eſtate in a large quantity of land; but he endeavours to palliate this moſt enormous act of power by a number of pretexts, on each of which your Memorialiſt begs leave to make a few obſervations.

The Governor endeavours to diſguiſe the grants made to the late Governor under the name of "reſervations in his own name, which he intend-"ed for his own uſe." Your Memorialiſt therefore deſires leave, as briefly as poſſible, to explain the manner of theſe grants, and as they are all (mutatis mutandis) of the ſame form and tenor, the

the manner of one will ſerve for all. In theſe grants it is not the Governor who grants, but his Majeſty, who by the advice of his Governor and Council of the province, for the encouragement of new plantations, &c. grants a certain number of acres, under certain conditions, to the perſons whoſe names are entered on the grant; among theſe names is that of Benning Wentworth, the late governor of New Hampſhire, for five hundred acres, ſo that he is as much a grantee as any other perſon named, yet the Governor diſtinguiſhes this from all the reſt, and calls it a reſervation, but upon what ground he does not ſhow: it is true the late Governor, as keeper of the ſeal of the province, did put the provincial ſeal to theſe grants, and ſo does the keeper of the great ſeal of England, as occaſion requires, to grants to himſelf, even to grants of honour, to the patent of his own peerage, which is of ſo much higher nature than the grant of lands; yet neither in the one caſe nor in the other, does the perſon affixing the ſeal vitiate the grant to himſelf, but it is ſtill a good grant, if not deficient in other circumſtances, and therefore all the argument the Governor endeavours to build upon this ſpecious foundation of unappropriated reſervations will, it is humbly conceived, fall of itſelf to the ground.

The Governor ſays, that the widow was but "tenant for life by the will, and therefore the re-"verſion belonged to his family, which ſhews he "acted diſintereſtedly." By the will it will appear (as the Governor indeed allows a little before in his defence) that "the whole eſtate was given "to the widow;" but even allowing her only te-

nant for life, the reverſion, or any part of it, could not belong to the Governor's family; for as the late Governor did not die inteſtate, the act of the province for the diſtribution of the eſtates of inteſtates could not extend to his caſe, his lands would therefore follow the courſe of the common law, and would go to the heir of his next brother, but not to the governor or his family, for he is ſon only of the fourth or fifth brother, and all the intermediate brothers have children. So that all this appearance of diſintereſtedneſs, with which the Governor plumes himſelf, comes to nothing when duly conſidered.

The Governor has given an account of the hard treatment a number of poor people met with, who claimed under the late Governor, but whoſe lands fell by the King's decree within the province of New York; and doubtleſs, as they had a colourable title when they firſt went on their land, it being then ſuppoſed in New Hampſhire, and as they had expended thereon ſo large a ſum as 1200 l. lawful money, equal to 800 l. ſterling, the diſpoſſeſſing them, though probably legally done, was an act of great harſhneſs in the then Governor of New York; but the Governor of New Hampſhire does not ſhew how this applies to the preſent caſe, unleſs he means to have inferred, that becauſe the Governor of New York had diſpoſſeſſed, probably *in a legal way*, a man who held *only under a colourable title*, that therefore he, the Governor of New Hampſhire, had a right to go two ſteps further, and diſpoſſeſs, *without any form of law at all*, a woman who held *under a good title*, her

her lands being really within the province in which they were granted.

The Governor ſays, theſe grants " were forfeit-" ed for nonperformance of the conditions on " which they were granted, even ſuppoſing the " original title to have any validity:" to this your Memorialiſt begs leave to anſwer, that according to the beſt information he could obtain when in New Hampſhire, this was not the caſe of ſeveral of them, but allowing it to be as the Governor ſays, that theſe grants were all forfeitable in a due courſe of law for nonperformance of the conditions, this could be no ground for the Council's deciding (as the Governor allows they did at his deſire) " that the original title never had any " validity."

Your Memorialiſt readily admits that it is very poſſible the late Governor might not attempt to alienate theſe lands, unleſs in thoſe inſtances where he did alienate them; with this obſervation however, that theſe inſtances are not confined, as the Governor ſays, " to one or two," but are many: yet your Memorialiſt does not agree with the Reſpondent, that this proceeded from the late Governor's being conſcious of the inſufficiency of his title, as the Reſpondent pretends, for in that caſe none of the lands would have been ſold; but your Memorialiſt is perſuaded that it proceeded from no more proper purchaſers offering; your Memorialiſt is alſo very ready to allow, that the late Governor might have been very deſirous of having new grants of theſe lands from the Reſpondent, as they would have lengthened the term allowed for the performance of the conditions of the grant,

and

and deferred the payment of the quit-rents; but it does not appear how this affects the preſent caſe.

The Governor obſerves, that "at one time "the late Governor had ſo deviſed his eſtate#, as "that three-fourths of it would probably devolve "upon the Reſpondent, but that the old gentle-"man was afterwards prevailed upon to alter his "will, and deviſed his whole eſtate to his wife." This your Memorialiſt believes to be true; and ſubmits to your Lordſhips, whether the Gover-nor has not here given a more *genuine* reaſon for that harſhneſs, with which it appears the widow has been treated, than any he has aſſigned elſe-where in his defence.

Your Memorialiſt begs leave to obſerve, that the Reſpondent aſſerts, that the late Governor did alienate, in one or two inſtances, "and the "perſons who made *ſettlement* in theſe caſes, were "afterwards ſecured in their poſſeſſions by the Re-"ſpondent;" but he aſſerts a little farther on, that there were not "any purchaſers under the late "Governor who made *improvements*." Your Memo-rialiſt ſubmits to your Lordſhips, whether the Go-vernor does not here aſſert in one place what he denies in another. Your Memorialiſt has taken the liberty to mark theſe two places in the fore-going copy of the Governor's defence, in order that your Lordſhips may, with the leſs trouble re-fer to them, and judge of the matter.

They are printed in italics.

Your Memorialiſt begs leave to obſerve, that he charged the Governor with having *propoſed* to the Council to adviſe and conſent to the granting to himſelf, but through other perſons, all thoſe lands

lands which had been granted to his predeceſſor; it is not to be expected that the Governor would ſuffer this to appear unneceſſarily on the journals; but it appears by the journals, that the Council actually did what the Governor deſired, for they adviſed and conſented to the granting theſe lands, not to any particular perſons by name, but generally to ſuch as the Governor pleaſed, and thereby put them into his ſole diſpoſal, as effectually as if the intention itſelf had appeared on the journals: it may be that the Governor, alarmed at the ſcandal occaſioned by ſo great an injuſtice, and deterred alſo by your Memorialiſt's oppoſition, has not ventured to appropriate theſe lands to himſelf, as he at firſt intended, and has contented himſelf with only parcelling them out among his dependants, but this does not leſſen the injuſtice done to the party by the Governor and Council, nor does it contradict what your Memorialiſt has ſaid.

The Governor aſſerts, that no *queſtion* was ever put to the Council, about granting theſe lands to him. Your Memorialiſt allows, that no ſuch *queſtion* was ever put to the Council; nor did he ever aſſert that it was; but he is ready to teſtify, that what he has aſſerted in the third Article of his Memorial is ſubſtantially and really true; and he begs leave to refer your Lordſhips thereto, for an anſwer to what the Governor ſays of this matter's not having been debated on a day previous to the paſſing of the vote. Your Memorialiſt would not have tendered his own evidence, but that the matter paſſed in the preſence only of the Governor and Council; and as it cannot be expected they ſhould impeach

impeach themſelves, your Memorialiſt is the only evidence that can poſſibly be given. Your Memorialiſt begs leave further to obſerve, that by the Minutes of the Council, which the Governor appeals to on this occaſion, and by his own admiſſion, it appears he has illegally and unjuſtly taken away the widow's lands, and granted ſome of them to other people. Your Memorialiſt preſumes, that when your Lordſhips ſee a man doing this, you will not think it improbable that it was done for his own benefit.

Your Memorialiſt denies that his reaſons of diſſent, or any part of his conduct, have "a tendency againſt the ſettlement of the land." The greateſt encouragement the people in new ſettlements can have, is the ſecurity of their property according to the law of England; and thoſe who have deprived them of this ſecurity, friends as they may be to themſelves, are truly the greateſt enemies to population, improvement, and good government.

The Governor, in his defence to the third Article, has twice mentioned and argued from the opinion of the Attorney and Solicitor General, which he has ſo ſtrangely perverted. Your Memorialiſt truſts that what he has ſaid on the defence to the firſt Article has ſufficiently ſhewn the prevarication in this matter; he therefore begs leave to refer your Lordſhips to it.

The Governor further obſerves, that if any of the claimants under the late Governor think themſelves aggrieved, the law is open to them for redreſs. Your Memorialiſt begs leave to obſerve, that a poor perſon, who has expended every thing he

he had on his land, and is then turned off, is quite unable to contend in law with a Governor and Council, who have the ſupreme direction of every thing in the province.

The Governor ſays, that your Memorialiſt's diſſent was admitted on file the very day it was produced; but on the 13th of June laſt, fifteen months after it was produced, the Council anſwer it and admit it on file.

Your Memorialiſt denies, that he ever, in public or in private, expreſſed his wiſhes that he might be ſuſpended; he never had any ſuch wiſhes; his deſire has always been to live in peace and quiet, as long as it could be conſiſtent with his duty.

The IV. Article of Memorial.

That, in conſequence of the oppoſition he was thus in duty obliged to make, your Memorialiſt has been very injuriouſly treated, and, at one time, received much perſonal abuſe from the Governor; but your Memorialiſt reſtrained himſelf by his reſpect for government, by his conſideration of the ill effects of any public reſentment at this time in New England, and by his great confidence in the King's juſtice. Memorial Article IV.

The Answer to IV. Article of Memorial.

The generality of this Article puts it out of the Reſpondent's power to anſwer any particular allegations that may be urged under cover of ſuch general aſſertions; but he declares he does not know of any ill treatment Mr. Livius ever received in conſequence of his oppoſition in Council, which he took great pains to publiſh without doors himſelf. Anſwer to IV. Article of Memorial.

And he likewiſe avers, that Mr. Livius never experienced any from his hands, on that or any other account whatſoever. Mr. Livius was ſome time one of the judges of the court of Common Pleas for this province; but when the act took place for the diviſion of counties, the provincial commiſſion for the ſtanding judges died of courſe; and when the commiſſions for the county judges were made out, Mr. Livius was not appointed; but this was owing, *among other cauſes*, to a great clamour and frequent complaints made about his extraordinary behaviour and glaring partiality while he held that office. In ſhort, he was involved in ſuch a ſeries of male practices, and embarraſſed in his private circumſtances in a manner that rendered him a very unfit perſon to be continued in ſuch a truſt. He was even abſent from the province, to avoid an execution iſſued againſt him for a debt of 374 l. lawful money, at the time that there was a neceſſity of iſſuing new commiſſions for county judges, a circumſtance that would alone make it improper, and even indecent, to reinſtate him in that ſtation, if there had been no other exception; and his removal from being judge became a matter of duty and neceſſity; and that opportunity of dropping him when the provincial commiſſion ceaſed, was choſen out of tenderneſs to him, rather than to ſuperſede or diſmiſs him.

The Reſpondent alſo declares, upon the honour of a gentleman, that he never ſhewed any perſonal abuſe to Mr. Livius, but treated him alſo with more civility and politeneſs than ever he did the Reſpondent. His behaviour in Council was often very haughty, imperious, and not conſiſtent with com-

common decency; from whence it was apparent, that he ſought for ſome return that might afford him a pretence to complain, but he was always diſappointed. In his diſſent, he ſet forth, that the Reſpondent aſked the Council to adviſe and conſent to the granting theſe reſervations to himſelf. It was conſidered very inſulting to him to aſſert ſuch a thing in the face of the Council, when it was not the fact; yet the Reſpondent treated him in the mildeſt manner on the occaſion, and only expreſſed his concern that Mr. Livius would not obſerve more decency in Council than to alledge ſuch things when they were not true.

Reply to Answer to IV. Article of Memorial.

Reply to Anſwer to IV. Article of Memorial.

The Governor, in Anſwer to the fourth Article againſt him complains of the generality of the charge; but, general as it is, the Governor's own conſciouſneſs has alone conducted him to one particular inſtance of injurious treatment of your Memorialiſt, namely, the manner in which he was diſmiſſed from the office of a judge. The Reſpondent endeavours to guard againſt and palliate this with all the art he is capable of, and attributes it even to tenderneſs to your Memorialiſt. As many of the Governor's aſſertions on this head do highly reflect on your Memorialiſt, he begs leave, although it be departing from the queſtion before your Lordſhips, to make ſome obſervations thereon. As to the tenderneſs towards him, your Memorialiſt obſerves, that it was done without even a pretence of his having been heard, either in public or in private, on theſe complaints, which the Governor now, for the firſt time, mentions, that it

was done even without your Memorialiſt's knowing any thing of it ; and that the perſon who ſucceeded him, was brought up into Council, contrary to the cuſtom on like occaſions, in order to be ſworn into office in the preſence of your Memorialiſt, which was intended to be the firſt notice he was to have of his diſmiſſion ; but being engaged out of town that day, he was not preſent in Council, and thereby avoided the inſults prepared for him, and did not hear of what had been done till his return the next evening, when he was firſt informed of it by common report only ; nor did he ever hear, till now, that any other reaſon was pretended for this but his having offended the Governor by his proteſt. He admits there was a neceſſity for a new commiſſion on the diviſion of the province into counties ; and that the Governor did take that opportunity to diſmiſs him ; but how far that leſſens the injury done him, he ſubmits to your Lordſhips.

Your Memorialiſt alſo admits, that his circumſtances have been much injured by his not ſiding with the Governor, for every poſſible method of diſtreſſing and perplexing him has been practiſed. He alſo admits, that when, in a very unexpected manner, a judgment was given againſt him for 374 l. lawful money, he had not ſo much money by him, and as he knew every opportunity of troubling and diſgracing him would be eagerly ſeized, and was informed that his perſon was not to be ſpared on this occaſion, he croſſed the river, into the other province, for a few days, about a week, till the money might be raiſed, which was ſoon afterwards done, and the judgment ſatisfied ; but he denies, that he was out of the province, at

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the time of his diſmiſſion and the appointing a new judge ; and he alſo aſſures your Lordſhips, that at no time was he indebted to the amount of near one-fifth of the property belonging to him ; but money is ſo ſcarce there, that it is hardly poſſible for a man, on a ſudden emergency, to raiſe ſuch a ſum immediately, though his property be very conſiderable.

When your Memorialiſt mentioned the injurious treatment, and perſonal abuſe he had received, as it is a ſubject which no man of feeling can in his own caſe put very minutely on paper, he was induced, from the nature of it, to expreſs himſelf in general terms; the Governor complains of this generality, yet when he comes to charge your Memorialiſt with ſuch high crimes as glaring partiality, and a ſeries of male practice as a judge, he does not aſſign one inſtance, though the charge, from its nature required to be ſpecified. The Governor has alſo, in ſeveral other parts of his defence, miſrepreſented your Memorialiſt in a general way: it is not ſurpriſing, that when the Governor has ſo little of importance to ſay in his own defence, he ſhould endeavour to make it up by vilifying his accuſer; recrimination being uſually the laſt reſource of the guilty, and a ſtrong mark of a bad cauſe: but as theſe inſinuations are all generally expreſſed, your Memorialiſt can only put the ſtrongeſt negative upon them, and as he is ſo diſtant from home, and theſe charges unexpected, he can only generally defend himſelf by ſuch teſtimonies as will render theſe charges highly improbable, and he hopes incredible. Namely, by the character which many perſons

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of credit here, who have long known him, are ready to give him; by producing every perſon (he can) now in England, who had any knowledge of New Hampſhire, to teſtify what character he bore there; and by ſhowing to your Lordſhips ſome public papers, and among them an extract from the journals of the Governor and Council and General Aſſembly*, appointing your Memo-rialiſt chairman of a committee for reviſing and altering the laws of the province, a truſt very unlikely to be committed to a perſon, who, as your Lordſhips are now informed, was diſmiſſed from the office of a judge *but a few months before*, " on " a great clamour," and frequent complaints made about his extraordinary behaviour " and glaring " partiality," and who had been " involved in a " ſeries of male practices."

* Of 21ſt. Dec. 1771.

The V. Article of Memorial.

Memorial Article V. That in an action brought in the Common Pleas in the ſaid province, by two executors of Benjamin Plummer, againſt the executor of Sarah Wentworth, the judges were ſeveral times changed, until a judgment upon a particular point was at length obtained in favour of the Governor. That the ſaid action, though brought in other names, was for the benefit of the Governor, who had bought the bond on which the action was founded, as will appear by the perſons now in London, who bought the bond for him. That your Memorialiſt could have mentioned ſeveral other illegal and unworthy acts, but he forbears taking up too much of your Lordſhips time.

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The Answer to V. Article of Memorial.

Answer to Memorial Article V.

The Reſpondent admits that the action referred to *was brought for his benefit*, but he denies that any judges were changed, or that any unfair means were exerciſed to ſerve that cauſe, either by himſelf, or any other perſon on his behalf, as the ſeveral depoſitions taken on the caſe will teſtify; whatever force or caſt of a different nature ſuch general aſſertions may acquire by any particular conſtructions. It will alſo be evident, that the proſecution was carried on in the uſual courſe of all other proceedings in the court, and with conſent of all parties. The judgment that can only be referred to, was that the action could be ſuſtained without the appearance of both executors. It was very immaterial to the plaintiff whether an immediate trial was had, or whether it was delayed until a power of attorney was received from the other executor from London, which had been ſent for.

A circumſtance of ſuch a nature cannot be ſuppoſed to be an inducement for any unworthy management to obtain it. Moreover, as there is an appeal to the ſuperior court from all judgments in the Common Pleas, the iſſue in all caſes below is conſidered of very little moment. It proved ſo in this very inſtance, for the ſtanding judges in the ſuperior court adjudged the point in queſtion in favour of the defendant, when the appeal came before them, and that judgment ſtood againſt the plaintiff, but the bond was redeemed, and the matter ended. Every judge and other officer in the province are ſenſible, that they cannot recommend

mend themſelves to the Reſpondent more than by exerciſing their judgment with the utmoſt freedom and impartiality in all cauſes.

The Reply to Answer to V. Article of Memorial.

The Reply to Anſwer to V. Article of Memorial.

In anſwer to this fifth article, the Governor admits that the action referred to was brought for his benefit, but he denies that any judges were changed, &c. and this he ſays will appear by the depoſitions in the caſe. Your Memorialiſt well knows the great power of the Governor and Council throughout the province, and the number of dependants they have, among whom there are poſſibly ſome who would go great lengths to ſupport the conſequence and convenience they derive from the favour in which they ſtand with the ſupreme power in the province. Nevertheleſs your Memorialiſt, conſcious of the truth and juſtice of his repreſentations, does truſt that nothing will appear materially to contradict what he has ſaid on the ſubject, and he begs leave again to aver to your Lordſhips, that in the caſe mentioned the judges were ſeveral times changed; that the ſtanding court of Common Pleas, of which your Memorialiſt was then one, firſt decided the queſtion mentioned againſt the Governor; that your your Memorialiſt was very ſoon after diſmiſſed, and another judge withdrew himſelf on ſome pretence; that at the next term a ſpecial court was appointed, who took up the already decided queſtion, but on conſidering it, agreed to the propriety of what had been before determined; that at the next term another ſpecial court was appointed,

pointed, and with the like ſucceſs; that at the next term another ſpecial court was appointed, who after ſome heſitation about it, did at length decide (as the Governor in other words admits) that the appearance of one executor was the appearance of both; ſo that, according to the beſt of your Memorialiſt's memory, out of nine judges appointed in the Common Pleas, three only were of opinion for the Governor, and yet he carried his point: your Memorialiſt begs leave to ſubjoin the names of the ſeveral judges, according to the beſt of his memory.

Daniel Warner, Eſq. of Portſmouth. Clement March, of Greenland, Eſq. Peter Livius	The ſtanding court of Common Pleas, who firſt ſat in the cauſe.
Clement March, Eſq. Nath. Folſom, Eſq. of Exeter. George Froſt, Eſq. of Newcaſtle.	Second Term.
Joſhua Bracket, Eſq. of Portſmouth. Samuel Penhallow, Eſq. of Portſmouth. And either Clement March, or Nathaniel Folſom.	Third Term.
Nathaniel Folſom, Jacob Sheafe, Eſq. of Portſmouth, John Phillips, Eſq. of Exeter.	Fourth Term.

Of all theſe Daniel Warner, Nathaniel Folſom, John Phillips, were of opinion for the Governor.

It is true, on the caſe being removed into the other court, the judgment was, as the Governor obſerves, reverſed; but this only proves that the judgment at firſt given by that court in which your Memorialiſt ſat, and afterwards agreed to by all theſe ſpecial courts, ſave one, was legal and right.

The Governor ſays the judgment of the Common Pleas was not of moment, becauſe it was reverſible for error in the ſuperior court. By the ſame rule a judgement in the Common Pleas in Weſtminſter-hall is not of moment becauſe it is reverſible for error in the King's Bench: nor, by the ſame reaſon, is the judgment of the King's Bench of moment becauſe that alſo is reverſible in the Houſe of Peers for error.

The Governor alledges, that it was very immaterial whether an immediate trial was had, or whether it was delayed till a power of attorney was received from the other executor from London, which had been ſent for. But your Memorialiſt is of a contrary opinion, being perſuaded, that no ſuch power of attorney could have been obtained, as the other executor is a perſon of too much honour to have lent his name, when informed of the oppreſſive purpoſes for which this action was originally brought: and the Governor himſelf ſays, that when judgment on the point conteſted went againſt him in the ſuperior court, the affair ended, and the bond was redeemed; but

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by what ſort of compoſition he does not think proper to ſpecify.

The Governor does not deny the buying of the bond for his account, but expreſsly admits it by ſaying, that the action was brought for his benefit. Your Memorialiſt ſubmits to your Lordſhips, whether this kind of maintenance is proper in a Governor, and whether it does not furniſh a reaſonable preſumption of the truth of what your Memorialiſt has ſaid concerning the manner in which this action was conducted.

The VI. Article of Memorial.

That your Memorialiſt thought to have further proved ſeveral of the facts above mentioned, by referring your Lordſhips to the copies of the journals of the Council, which he expected to have found in this office; but to his great ſurprize, he finds the Governor, the better to keep out of ſight the practices of himſelf and his Council, has even ventured to diſobey his Majeſty's inſtructions, and has not ſent the copies of the ſaid journals of the Council, although the ſame inſtructions, as your Memorialiſt is authentically informed, are regularly obeyed by the reſt of the King's Governors abroad. Memorial VI. Article.

The Answer to VI. Article of Memorial.

To this article the Reſpondent obſerves, that on his arrival to the Government, he directed the Secretary of the province to furniſh him with all the copies of provincial tranſactions that were uſually tranſmitted home, and thereon was furniſhed Anſwer to VI. Article of Memorial.

with copies of the journals of the Aſſembly and Council, which he was informed was the whole of what had been uſually ſent from that office, and them he regularly tranſmitted; the minutes of the Council, regarding only local incidents, were not conſidered of any great moment, in which light they will appear; and that was the only reaſon of not tranſmitting them. But they have always been regularly recorded and preſerved clear from any kind of alteration; all perſons that had occaſion had free recourſe to them, and were furniſhed with copies of any that they deſired, which Mr. Livius well knows.

Reply to Answer to VI. Article Memorial.

Reply to Anſwer to Memorial, Article VI.

In anſwer to this ſixth article, the Governor endeavours to charge the diſobedience to the King's inſtructions on his ſecretary, and to excuſe it by ſaying, that the tranſactions relate only to local incidents, and are of no moment. Your memorialiſt ſubmits to your Lordſhips the propriety of theſe excuſes. Every provincial tranſaction is a local incident, and what is ſaid thereon would equally excuſe every diſobedience of a provincial Governor. It is in itſelf alſo of the greateſt moment, that the proceedings of the Governor and Council ſhould be regularly ſent over; for otherwiſe the moſt arbitrary and unjuſtifiable acts might be perpetrated without the King's miniſters having that information which was intended by this inſtruction, or any probable method of reforming, or even knowing the abuſes of government, till their conſequences became very alarming. When

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the King has commanded, it is of moment that he ſhould be obeyed; and if the King's legal and practicable inſtructions to a Governor are ſuffered to be trifled with, and obedience refuſed or delayed on ſuch pretences as are now offered, the conſequences will be very dangerous. But what greatly aggravates the Governor's miſconduct in this inſtance is, that (as your Memorialiſt is well informed) the ſame diſobedience was a cauſe of the late Governor's being removed from the government of the province.

The VII. Article of Memorial.

That upon conſidering the whole of the Governor's conduct, there appears to have been formed a connected and deep laid ſyſtem of injuſtice; for by the Council's being filled up with his relations, by their precluding from the journals the proteſt of the few who might continue loyal; and, in contempt of the King's command, by their keeping it in their power to alter the journals of the Council, the Governor has been able to do whatever he pleaſed, without any poſſibility of the King's miniſters being informed of his enormities through the uſual channels. Your Memorialiſt therefore finds himſelf obliged, as the King's faithful ſubject, and more eſpecially as a perſon in truſt for the government of the province, to give your Lordſhips notice of ſuch extraordinary proceedings, in full confidence that they will be ſpeedily and effectually redreſſed. Memorial Article VII.

Signed

Peter Livius.

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Answer to VII. Article Memorial.

Answer to VII. Article of Memorial.

With reſpect to his remark, that the Council is filled with the Reſpondent's relations, he would obſerve, that he has but one blood-relation among the whole that ever attends the Council: he never recommended any ſuch to be of the Council: he never wants their favour or influence, but where it may be neceſſary to promote his Majeſty's ſervice; and in all matters they judge for themſelves, and act with freedom; and, as he believes, with ſtrict regard to the oath of fidelity they have taken to ſerve his Majeſty. What foundation Mr. Livius had to charge the two principal branches of the legiſlature of this province with being combined in acts of injuſtice, your Lordſhips will judge; to whoſe wiſdom and candour the Reſpondent ſubmits himſelf with the utmoſt deference and reſpect, for ſuch relief againſt the aſperſions of Mr. Livius, as the nature of the caſe ſhall appear to deſerve from this explanation of facts, and the ſeveral proofs offered in the ſupport of it.

Portſmouth, New Hampſhire,
December the 18th, 1772.

J. Wentworth.

The Reply to the Answer to VII. Article of Memorial.

Reply to Answer to VII. Article of Memorial.

Your Memorialiſt informed your Lordſhips, that the Council were nearly related or connected to the Governor. This is not denied by the Governor; but he endeavours to palliate it by ſaying,

ing, (what is not the fact) that he has but one blood-relation who ever attends the Council. Your Memorialiſt thought it very proper that your Lordſhips ſhould be informed of this circumſtance of kindred, which, on being known, will ſpeak ſufficiently of itſelf; being indeed the real ſource of that partiality and oppreſſion which have overſpread the province in a manner ſcarcely conceivable by your Lordſhips, who are reſidents in this great kingdom. The province of New Hampſhire now contains a great number of inhabitants; and, as the Governor obſerves, is daily increaſing by emigrants out of thoſe neighbouring provinces which are fully ſettled; ſo that it is now become a matter of great importance to diſſolve a family-combination which has been already productive of ſo much injuſtice. The chief dependence of the King's miniſters for keeping the uſual internal affairs of the colonies under proper management, is on the appointment of a number of perſons, of the firſt character for probity, ability, and eſtate, in the province, to be the Governor's Council, and a check upon him whenever he much exceeds the legal or proper bounds of his authority, and has been generally effectual in other provinces: but when a Council is compoſed ſo generally of the Governor's near connections and relations, this dependence can only ſerve to deceive the King's miniſters, by an appearance of the outward form though the ſubſtance be gone.

Your Memorialiſt begs leave to add, that he has at all times been a ſteady friend to government;

ment; but, when he ſaw ſuch frequent ſacrifices of juſtice and right to the Governor's avarice or reſentment, he could not as the King's faithful ſervant quietly look on. In conſequence of the part he took he has ſuffered greatly, and is ſtill further threatened; but, as a ſervant of the crown, he hopes for your Lordſhips protection in this very diſagreeable and very dangerous diſcharge of his duty. He ſought not any cauſe of complaint againſt the Governor, nor endeavoured to ſtir up any ſpirit of oppoſition in the province, but has made a dutiful repreſentation to your Lordſhips, and has therein mentioned only ſuch facts as came in the mere line of his duty: he has allowed the Governor to make his defence without any interpoſition or trouble, and has endeavoured to act without malice or partiality. The few proofs and papers he has any occaſion to produce have come over unſollicited and unſought for by him, the greater part of them being furniſhed by the Governor. From theſe, and from the prevarication and contradiction in the Governor's defence, (very ſtrong evidence in any caſe) he truſts that the juſtice of his repreſentations will be apparent to your Lordſhips.

P. Livius.

THE

REPORT

OF THE

LORDS COMMISSIONERS of TRADE and PLANTATIONS.

To the King's Moſt Excellent Majeſty.

May it pleaſe your Majeſty,

PETER LIVIUS, Eſq. one of your Majeſty's council for the province of New Hampſhire in North America, having on the 9th of July laſt preſented a Memorial unto us, complaining of the conduct of John Wentworth, Eſq. your Majeſty's governor of that province, and charging him with oppreſſion and maladminiſtration in the government thereof; and it appearing, upon reference to the Papers and Records in our office, that the Journals of the council of the ſaid province, as a council of ſtate, and to which the complainant referred for proof of moſt of the facts ſtated in his Memorial, had not been tranſmitted ſince the commencement of Mr. Wentworth's adminiſtration, we thought it our duty immediately to ſend to the ſaid governor a copy of the Memorial of Complaint, and to require him to loſe no time in tranſmitting to us a full and explicit anſwer to the ſeveral charges al-

ledged againſt him, accompanied with ſuch depoſitions and proofs in his own behalf as he ſhould think proper, giving at the ſame time full liberty to Mr. Livius, or any other perſon concerned, to make affidavit before any judge, or other magiſtrate, of what they knew concerning the ſubject-matter of the ſaid complaint; and that ſuch judge or other magiſtrate ſhould be likewiſe enjoined to ſummon ſuch perſons as the complainant or any other perſons in his behalf ſhould name.

That the ſecretary ſhould be likewiſe enjoined to give atteſted copies (from the Records) of the Minutes of the Council, and of any other papers which might be required by the complainant, or any others concerned; and if it ſhould appear, as alledged by Mr. Livius, that the ſaid Minutes or other Records were defective in any matter required by him, or them; or that thoſe tranſactions, which were alledged to have paſſed at any meetings of the council, had been omitted to be entered on the Journal, then that the ſecretary ſhould be, in ſuch caſes, further enjoined to give evidence upon oath touching ſuch defect or omiſſion.

That the ſaid governor and the complainant, or other perſon or perſons, ſhould interchange the ſaid proofs and depoſitions, ſo ſoon as the ſame ſhould have been made, and that twenty days ſhould be allowed, as well for himſelf as the complainant, or other perſons concerned, to make his or their reply by affidavit, or otherwiſe, to be in like manner interchanged, and afterwards certified and tranſmitted to us under the ſeal of the province, that we might be enabled to repreſent to your Majeſty on the true ſtate of this affair, pur-

ſuant to the powers and directions contained in our commiſſion under the Great Seal.

In conſequence of the foregoing directions, your Majeſty's governor has tranſmitted to us his Anſwer to each article of the complaint contained in Mr. Livius's Memorial, accompanied with atteſted copies of the Journals of the Council, as a council of ſtate, from the commencement of his adminiſtration, and of ſuch depoſitions as have been taken to ſupport the facts alledged by the governor in defence of his conduct; and we having taken the ſaid Complaint and Anſwer into our conſideration, together with Mr. Livius's Reply to the ſaid Anſwer, copies of all which are hereunto annexed, and having heard counſel learned in the law, as well in ſupport of the complaint as of the governor's defence, we humbly beg leave to repreſent to your Majeſty thereupon, that it does appear upon full examination and clear evidence,

Firſt, That your Majeſty's governor of New Hampſhire has, in concurrence with the council for the ſaid province, compoſed almoſt altogether of his own kindred or relations by blood or marriage, taken upon him to reſume and to regrant many large tracts of lands within the ſaid province, the property of your Majeſty's ſubjects in virtue of former grants, upon bare ſuggeſtion only that the conditions of ſuch former grants had not been complied with, and without the intervention of a jury, or any proof or evidence whatever to eſtabliſh the fact of ſuch default.

Secondly, that theſe reſumptions have been made without any notice (except in one or two caſes) to the proprietors of ſuch tracts ſo re-

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ſumed; and that in ſome inſtances, in which the governor and council did think fit to allow time to the proprietors of certain tracts to make good the conditions of their grants, ſuch grants were nevertheleſs reſumed, and the lands regranted long before the expiration of the time allowed, and without any notice given to the parties.

Thirdly, That the ſaid governor did, without any legal proceſs whatever, reſume and regrant ſeveral tracts of land, reſerved to the late governor within each of the townſhips granted by him, and which reſervations he had by his will deviſed to his widow; and that ſuch reſumption was made in conſequence of a reſolution of the council, that the ſaid reſervations did not convey the premiſes, they being granted by the governor to himſelf.

Fourthly, That, pending an action brought in the inferior court of Common Pleas, in which your Majeſty's governor was intereſted, and which he admits was brought for his benefit, the judges were in three ſucceſſive terms changed, and ſpecial judges appointed; that in the ſtanding court of Common Pleas, which firſt ſat in judgment upon the action brought by the governor, a queſtion ariſing out of the action, was decided againſt the governor's intereſt; that in the ſecond term two new judges were appointed, which together with one of the judges of the ſtanding court above-mentioned, adopted the deciſion of the former court; that in the third term two of the judges were again changed, when the ſame queſtion was again brought forward, and decided in the ſame manner as above; that in the fourth term, two of the judges, who ſat in the former court, were

removed

removed, and a new bench appointed, conſiſting of Jacob Sheaffe, and John Phillips, Eſqrs. who had not acted in that capacity in any of the three preceding terms, and of Nathaniel Folſom, who had ſerved in the two preceding terms, and who is ſtated to have uniformly been of opinion for the governor in the queſtion that had been agitated upon the action in which the ſaid governor was intereſted; and that in the laſt mentioned court, the ſaid queſtion was a fourth time brought on to trial, and a judgment obtained in favour of the governor, though afterwards reverſed in the ſuperior court, in conſequence of a writ of error.

Theſe, may it pleaſe your Majeſty, are the material parts of the charge exhibited againſt Mr. Wentworth, nor is there any other part of the complaint exhibited by Mr. Livius, upon which any evidence has been produced to us, that does, in our humble opinion, lay the foundation for cenſure upon that gentleman's conduct. What we have ſtated in reſpect to the reſumption and regranting of lands, is not, we think, to be juſtified either by the plea of uſage or expediency; or by the opinion of the attorney and ſollicitor-general, in 1752, upon which the governor lays ſo great ſtreſs: which opinion appears to us, upon a full examination of it, to be confined to a particular caſe ſtated to them, not correſponding with the caſes in which the conduct of Mr. Wentworth is complained of; and that if it was applicable to ſuch caſes, yet it does not, in our humble opinion, warrant any reſumption of land claimed as private property under grants from the crown, upon bare ſuggeſtion only that the conditions have not been

been complied with; but on the contrary does, we humbly conceive, imply that the fact of the default ſhould be firſt found in a regular courſe of law. We further crave leave humbly to repreſent, that admitting the ſaid opinion did warrant ſuch a proceeding in reſpect to grants the conditions of which had not been complied with, which we conceive it does not, yet it is certainly not applicable either to the caſe of lands reſumed and regranted, before the term allowed for fulfilling the conditions of ſettlement were expired, or to the caſe of the reſervations to the late governor deviſed by him to his widow, the reſumption and regranting of which, in manner above ſtated, upon an extra-judicial opinion of the council, was, in our judgment, unwarrantable and unjuſt. And we ſubmit, whether the miſconduct of your Majeſty's governor, under theſe heads of complaint, is not greatly aggravated by his having omitted, from the commencement of his adminiſtration, to tranſmit the journals of the council, as a council of ſtate; a neglect, for which he is certainly reſponſible, and by which tranſactions of the greateſt importance to your Majeſty's intereſt, and the rights of your Majeſty's ſubjects have been concealed from your Majeſty's knowledge, and the governor and his council have gone on for a ſeries of years in a courſe of very irregular proceedings without comptrol.

With regard to what has been proved reſpecting the change of the judges, though aſſerted in a great number of depoſitions tranſmitted by the governor to have been conſonant to the uſage and practice in the colony, it is yet, in our humble opinion,

opinion, a proceeding, that under all the circumſtances attending it, is of a very extraordinary nature, and does lead to the ſuſpicion and preſumption of very unworthy conduct on the part of your Majeſty's governor. And upon the whole, we humbly ſubmit, that the complaint againſt Mr. Wentworth, ſo far as it regards the facts above ſtated, has been fully verified. At the ſame time it is our duty to repreſent, that the reports, which we have received through different channels, of the ſituation of affairs within your majeſty's government of New Hampſhire, do all concur in repreſenting the colony to have been, ever ſince Mr. Wentworth's appointment, in a ſtate of peace and proſperity; that its commerce has been enlarged and extended, the number of its inhabitants increaſed; and every attempt made to excite the people to diſorder and diſobedience, has been, by the firm and temperate conduct of Mr. Wentworth ſuppreſſed and reſtrained: but upon the whole, we humbly ſubmit, whether Mr. Wentworth's conduct, in the inſtances of mal-adminiſtration and oppreſſion, with which he has been charged, has been ſuch as renders him a fit perſon to be intruſted with your Majeſty's intereſt in the important ſtation he now holds.

All which is moſt humbly ſubmitted,

SOAME JENYNS,
BAMBER GASCOYNE,
GREVILLE,
GARLIES,
WM. JOLLIFFE.

WHITEHALL,
10th May, 1773.

THE

OPINION

OF THE

ATTORNEY and SOLLICITOR GENERAL,

in 1752.

QUESTION. Whether the Crown can reſume the Lands granted by the Province of the *Maſſachuſet's Bay* under condition of cultivation, thoſe Lands being now become a Part of New Hampſhire by the running of the boundary Line in 1738, in Caſes where the Proprietors have not performed the Condition of their Grants; and if the Crown can, what is the moſt adviſeable and regular Method of making ſuch Reſumption? Whether in the Caſe of the Lands granted away by the Province of the *Maſſachuſet's Bay* to particular Perſons, without any Condition of Cultivation, the Crown can now inforce the Proprietors of ſuch Lands to cultivate them, or oblige them to take theſe Lands under new Grants upon the ſaid Lands being made a Part of the Province of New

New Hampſhire, by the Determination of the boundary Line in 1738?

WE are clearly of Opinion the Crown may reſume *the* Lands granted on Condition of ſettling within *three Years*, where there has in Fact been *no Settlement*.

With regard to Lands granted by the Maſſachuſet's Bay without any ſuch expreſs Condition, where there has been no Settlement, *as they appear now to have been no Part of that Province*, their Grants are in themſelves void, as againſt the Crown, and there appears no Ground to ſupport them, but on the Foot of the Direction which we find to have been given in an Order of Council of the 22d of January, 1735, when the Commiſſion for marking the dividing Line between the two Provinces was firſt directed, viz. "That due Care ſhould be taken, that private "Property might not be affected by it." We do not find that this Direction was continued either in the Order of the 9th of February, 1736, on which the preſent Commiſſion iſſued, or in the Commiſſion itſelf, or that the Commiſſioners have in their Report taken Notice of any ſuch private Rights, or that they are ſaved in the final Order of Council, that eſtabliſhes the boundary Line. However, conſidering the manifeſt Intent of theſe Sort of Grants, whether appearing from the general Nature, or the particular Recitals or Conſiderations of them, that the Country may be ſettled and inhabited, and the tacit Condition attendant on them, that the Lands ſhould be ſettled in a reaſonable Time; we think due Care will be

taken of the private Property ariſing from theſe Grants, if His Majeſty ſhall be pleaſed to give theſe *Sort* of Proprietors a reaſonable Time to come in, and accept of new Grants upon Terms of ſettling the Lands within a certain Time, reſerving the old Quit-rent, and Pines fit for His Majeſty's Navy; and in Caſe of their not accepting theſe Terms, His Majeſty may reſume the Lands.

The proper Manner of making ſuch Reſumption, after ſuch *Default*, is by making new Grants to ſuch as ſhall be willing to accept them at ſuch Rents, and on ſuch Terms as ſhall be thought moſt adviſeable.

D. RYDER,
W. MURRAY.
14th Auguſt, 1752.

*** Inſtead of "*the Lands granted on Condition of ſettling within three Years*," which evidently refers only to the Lands mentioned in the Queſtion, the Governor in quoting this Opinion has put "*Lands granted on Condition of ſettling within a ſtated Time*," In order to give the Opinion a general reference, The Governor has alſo omitted all but the firſt and laſt Paragraphs of the Opinion, and thereby makes the word *Default* in the laſt Paragraph refer to the "*no Settlement*" in the firſt Paragraph. Whereas, in the Opinion, it refers to the Default of the Proprietors in not accepting of new Grants within a reaſonable Time. It is not probable ſuch Alterations and Omiſſions could have happened if the Governor himſelf had not been ſatisfied that this Opinion was not applicable to the preſent Caſe, and that it was neceſſary to alter it in Order to make it applicable.

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